

## Version 1 - LR 26 - General Discovery Provisions

**(See Fed. R. Civ. P. 26)**

### **LR 26-1 Initial Conference of Counsel for Discovery Planning (See Fed. R. Civ. P. 26(f))**

Unless exempted under [Fed. R. Civ. P. 26\(a\)\(1\)\(B\)](#) or otherwise ordered by the Court:

- (a)** The parties must hold a Fed. R. Civ. P. 26(f) initial conference of counsel for discovery planning within thirty (30) days after all defendants have been served. Counsel for plaintiff(s), upon learning the identity of counsel for defendant(s), must initiate communications with counsel for defendant(s). All counsel must then confer as required by [Fed. R. Civ. P. 26\(f\)](#).
- (b)** No written report of the initial conference of counsel for discovery planning is required (other than the form that is referred to in LR 26-2), but the parties must be prepared to report orally to the Court as to their discovery plan.
- (c)** The parties may seek discovery once the initial conference of counsel for discovery planning contemplated by this local rule has occurred.

#### **Practice Tip**

When making either an oral or written report of the initial conference to the Court, the parties are expected to address the items listed on Form 52 of the Federal Rules of Civil Procedure, Appendix of Forms.

### **LR 26-2 Initial Disclosures (See Fed. R. Civ. P. 26(a)(1))**

Unless otherwise ordered by the Court, parties who agree to forgo the disclosures required by [Fed. R. Civ. P. 26\(a\)\(1\)](#) can do so using the form issued at the time of filing (*see* Fed.R.Civ.P. 26(a)(1) Discovery Agreement form).

### **LR 26-3 Discovery Motions (See [Fed. R. Civ. P. 26](#) and [LR 37](#))**

#### **(a) Document Title (See LR 10-2)**

The document title must substantially comply with the following format:

Example	PLAINTIFF JOHN SMITH'S MOTION TO COMPEL
Example 2	DEFENDANT ABC CORPORATION'S RESPONSE TO PLAINTIFF JOHN SMITH'S MOTION TO COMPEL PRODUCTION

**(b) Page Limits**

Without prior Court approval, memoranda must be ten (10) pages or less (exclusive of exhibits).

**(c) No Replies**

Unless otherwise directed by the Court, a movant may not file a reply supporting a discovery motion.

**(d) Motions to Compel (See LR 37).**

**(e) Calendaring (See LR 7-1(e) and LR 7-1(f)).**

**(f) Resolving Discovery Disputes by Telephone Conference**

Parties encountering a discovery problem may telephone the assigned judge to set up a telephone conference to help resolve the issue(s). If the assigned judge is unavailable, the Court will attempt to have the telephone conference handled by another judge.

**LR 26-4 Motions for Protective Orders (See Fed. R. Civ. P. 26(c) and LR 3-8)**

A party or person asserting there is good cause for the Court to make an order that would limit access to discovery materials not filed with the Court, or would authorize a party or person to file any materials with the Court under seal, must show with respect to each particular material or category of materials that specific prejudice or harm will result if no order is granted. The showing must be sufficiently detailed to permit the Court in its good cause examination to identify specific factors supporting entry of the order sought. Where the order sought would authorize a party to file materials under seal, the showing also must articulate why, as an alternative to filing under seal, the information sought to be protected could not be redacted. Broad allegations of harm, unsubstantiated by specific examples or articulated reasoning does not satisfy the requirements of this rule. The showing must be made even if the other party stipulates to the entry of the order.

Commentary
Parties or persons applying for protective orders or orders authorizing the party or person to file materials under seal should review <i>Foltz v State Farm Mut. Auto. Ins. Co.</i> , 331 F.3d 1122 (9th Cir. 2003); <i>Phillips v. General Motors Corp.</i> , 307 F.3d 1206 (9th Cir. 2002); <i>Beckman Industries, Inc. v International Ins. Co.</i> , 966 F.2d 470 (9th Cir. 1992); <i>Gisby v Les Schwab Tire Center of Oregon, Inc.</i> , 2004 WL 848191 (D. Or. 2004); and <i>Fischer v City of Portland</i> , 2003 WL 23537981 (D. Or. 2003).

**LR 26-5 Waiver of Objections**

**(a) Objections Must be Timely**

Failure to object to a discovery request within the time permitted by the Federal Rules of Civil Procedure, or within the time to which the parties have agreed, constitutes a waiver of any objection.

**(b) Description Within Reasonable Time**

By making a timely objection, a party may preserve its privilege or its protection against production of attorney work product or trial preparation material without simultaneously

providing a "privilege log" or a description of the claims of privilege or work product required by [Fed. R. Civ. P. 26\(b\)\(5\)](#). However, such a "privilege log" or description of the claims of privilege or work product required by [Fed. R. Civ. P. 26\(b\)\(5\)](#) must be provided within a reasonable time after service of timely objections to a discovery request.

<b>Amendment History to LR 26</b>	
<b>December 1, 2000</b>	
LR 26.1 & LR 26.2	Revised and amended to conform with amendments to Fed. R. Civ. P. 26.
<b>June 1, 2002</b>	
LR 26.4(b)	Cross Reference to LR 5.2 updated.
LR 26.5(a)	Cross Reference to LR 10.2 added.
LR 26.5(c)	Cross Reference to LR 7.1 removed. The word "may" substituted for "must".
<b>June 1, 2006</b>	
Generally	Cross references updated. Appendix of Forms numbers updated. Format examples modified.
LR 26.2(b)	Text and Practice Tip deleted. Commentary added.
LR 26.3	The phrase "preliminary pretrial . . ." deleted; " and the words "Rule 16" added.
LR 26.4(a)	The words "the Rule 16" substituted for the words "a pretrial".
LR 26.5(a)	"The document . . ." sentence added.
LR 26.5(b)	The word "Briefs" deleted and replaced with the word "memoranda"
LR 26.5(d)	New Rule with subsequent sections re-lettered.
LR 26.5(f)	Text of LR 16.2 moved to this rule.
LR 26.6	New rule and Practice Tip.
LR 26.7	New Rule in light of <i>Burlington Northern &amp; Santa Fe Ry. Co. v U.S. Dist. Court for Dist. of Montana</i> , 408 F3d 1142 (9th Cir. 2005)
<b>December 1, 2009</b>	
LR 26-2	Commentary #3 deleted.
LR 26.3 & 26.4	Former LR 26.3 & 26.4 deleted with subsequent rules renumbered.
Generally	Cross-references updated and reference to Appendix of Forms deleted.
<b>Suggested Changes for October, 2010</b>	
<b>LR 26-1</b>	<b>Addition of a Practice Tip for parties to address the items listed on Form 52 from the Federal Rules of Civil Procedure, Appendix of Forms, when reporting on the initial conference to the Court.</b>